

THE HONORABLE JAMAL N. WHITEHEAD

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

O.H., an individual; C.D., an individual,  
Plaintiffs,

vs.

SECRET HARBOR, a non-profit  
corporation,

Defendant.

No. 2:23-cv-00060-JNW

**STIPULATED PROTECTIVE  
ORDER**

PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

2. “CONFIDENTIAL” MATERIAL

“Confidential” material shall include the following documents and tangible things produced or otherwise exchanged:

STIPULATED PROTECTIVE ORDER

1           1. Personally identifying information such as individuals' dates of birth, social security  
2 numbers, and home addresses;

3           2. The names and personal information of non-party individuals who are minors or who  
4 were minors at the time when documents containing their names or personal information were  
5 created;

6           3. Individuals' medical information and financial information contained in any  
7 personnel or other files;

8           4. Any image that depicts a minor; where it is indeterminate whether the subject of an  
9 image is a minor, these should be resolved in favor of confidentiality; and

10          5. Tax returns and tax forms for individuals.

11   3.    SCOPE

12           The protections conferred by this agreement cover not only confidential material (as  
13 defined above), but also (1) any information copied or extracted from confidential material; (2)  
14 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
15 conversations, or presentations by parties or their counsel that might reveal confidential  
16 material.

17           However, the protections conferred by this agreement do not cover information that is  
18 in the public domain or becomes part of the public domain through trial or otherwise.

19   4.    ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

20          4.1   Basic Principles. A receiving party may use confidential material that is  
21 disclosed or produced by another party or by a non-party in connection with this case only for  
22 prosecuting, defending, or attempting to settle this litigation. Confidential material may be  
23 disclosed only to the categories of persons and under the conditions described in this agreement.  
24 Confidential material must be stored and maintained by a receiving party at a location and in a  
25 secure manner that ensures that access is limited to the persons authorized under this agreement.  
26

1           4.2    Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise  
2 ordered by the court or permitted in writing by the designating party, a receiving party may  
3 disclose any confidential material only to:

4                   (a)    the receiving party’s counsel of record in this action, as well as  
5 employees of counsel to whom it is reasonably necessary to disclose the information for this  
6 litigation;

7                   (b)    the officers, directors, and employees (including in house counsel) of the  
8 receiving party to whom disclosure is reasonably necessary for this litigation;

9                   (c)    experts and consultants to whom disclosure is reasonably necessary for  
10 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound”  
11 (Exhibit A);

12                   (d)    the court, court personnel, and court reporters and their staff;

13                   (e)    copy or imaging services retained by counsel to assist in the duplication  
14 of confidential material, provided that counsel for the party retaining the copy or imaging  
15 service instructs the service not to disclose any confidential material to third parties and to  
16 immediately return all originals and copies of any confidential material;

17                   (f)    during their depositions, witnesses in the action to whom disclosure is  
18 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
19 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of  
20 transcribed deposition testimony or exhibits to depositions that reveal confidential material  
21 must be separately bound by the court reporter and may not be disclosed to anyone except as  
22 permitted under this agreement;

23                   (g)    the author or recipient of a document containing the information or a  
24 custodian or other person who otherwise possessed or knew the information.

25           4.3    Filing Confidential Material. Before filing confidential material or discussing or  
26 referencing such material in court filings, the filing party shall confer with the designating party,

1 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will  
 2 remove the confidential designation, whether the document can be redacted, or whether a  
 3 motion to seal or stipulation and proposed order is warranted. During the meet and confer  
 4 process, the designating party must identify the basis for sealing the specific confidential  
 5 information at issue, and the filing party shall include this basis in its motion to seal, along with  
 6 any objection to sealing the information at issue. Local Civil Rule 5(g) sets forth the procedures  
 7 that must be followed and the standards that will be applied when a party seeks permission from  
 8 the court to file material under seal. A party who seeks to maintain the confidentiality of its  
 9 information must satisfy the requirements of Local Civil Rule 5(g)(3)(B), even if it is not the  
 10 party filing the motion to seal. Failure to satisfy this requirement will result in the motion to  
 11 seal being denied, in accordance with the strong presumption of public access to the Court's  
 12 files.

### 13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each  
 15 party or non-party that designates information or items for protection under this agreement must  
 16 take care to limit any such designation to specific material that qualifies under the appropriate  
 17 standards. The designating party must designate for protection only those parts of material,  
 18 documents, items, or oral or written communications that qualify, so that other portions of the  
 19 material, documents, items, or communications for which protection is not warranted are not  
 20 swept unjustifiably within the ambit of this agreement.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
 22 shown to be clearly unjustified or that have been made for an improper purpose (*e.g.*, to  
 23 unnecessarily encumber or delay the case development process or to impose unnecessary  
 24 expenses and burdens on other parties) expose the designating party to sanctions.  
 25  
 26

1 If it comes to a designating party's attention that information or items that it designated  
 2 for protection do not qualify for protection, the designating party must promptly notify all other  
 3 parties that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
 5 agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as otherwise stipulated or  
 6 ordered, disclosure or discovery material that qualifies for protection under this agreement must  
 7 be clearly so designated before or when the material is disclosed or produced.

8 (a) Information in documentary form: (*e.g.*, paper, or electronic documents  
 9 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial  
 10 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that  
 11 contains confidential material. If only a portion or portions of the material on a page qualifies  
 12 for protection, the producing party also must clearly identify the protected portion(s) (*e.g.*, by  
 13 making appropriate markings in the margins).

14 (b) Testimony given in deposition or in other pretrial proceedings: the  
 15 parties and any participating non-parties must identify on the record, during the deposition or  
 16 other pretrial proceeding, all protected testimony, without prejudice to their right to so designate  
 17 other testimony after reviewing the transcript. Any party or non-party may, within fifteen days  
 18 after receiving the transcript of the deposition or other pretrial proceeding, designate portions  
 19 of the transcript, or exhibits thereto, as confidential. If a party or non-party desires to protect  
 20 confidential information at trial, the issue should be addressed during the pre-trial conference.

21 (c) Other tangible items: the producing party must affix in a prominent place  
 22 on the exterior of the container or containers in which the information or item is stored the word  
 23 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,  
 24 the producing party, to the extent practicable, shall identify the protected portion(s).

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
 26 designate qualified information or items does not, standing alone, waive the designating party's

1 right to secure protection under this agreement for such material. Upon timely correction of a  
 2 designation, the receiving party must make reasonable efforts to ensure that the material is  
 3 treated in accordance with the provisions of this agreement.

#### 4 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

5 6.1 Timing of Challenges. Any party or non-party may challenge a designation of  
 6 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
 7 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
 8 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
 9 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
 10 original designation is disclosed.

11 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute  
 12 regarding confidential designations without court involvement. Any motion regarding  
 13 confidential designations or for a protective order must include a certification, in the motion or  
 14 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
 15 conference with other affected parties in an effort to resolve the dispute without court action.  
 16 The certification must list the date, manner, and participants to the conference. A good faith  
 17 effort to confer requires a face-to-face meeting or a telephone conference.

18 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court  
 19 intervention, the designating party may file and serve a motion to retain confidentiality under  
 20 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
 21 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
 22 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on  
 23 other parties) may expose the challenging party to sanctions. All parties shall continue to  
 24 maintain the material in question as confidential until the court rules on the challenge.

#### 25 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER 26 LITIGATION

1 If a party is served with a subpoena or a court order issued in other litigation that  
 2 compels disclosure of any information or items designated in this action as  
 3 “CONFIDENTIAL,” that party must:

4 (a) promptly notify the designating party in writing and include a copy of  
 5 the subpoena or court order;

6 (b) promptly notify in writing the party who caused the subpoena or order to  
 7 issue in the other litigation that some or all of the material covered by the subpoena or order is  
 8 subject to this agreement. Such notification shall include a copy of this agreement; and

9 (c) cooperate with respect to all reasonable procedures sought to be pursued  
 10 by the designating party whose confidential material may be affected.

11 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
 13 confidential material to any person or in any circumstance not authorized under this agreement,  
 14 the receiving party must immediately (a) notify in writing the designating party of the  
 15 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the  
 16 protected material, (c) inform the person or persons to whom unauthorized disclosures were  
 17 made of all the terms of this agreement, and (d) request that such person or persons execute the  
 18 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit A.

19 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
 20 MATERIAL

21 When a producing party gives notice to receiving parties that certain inadvertently  
 22 produced material is subject to a claim of privilege or other protection, the obligations of the  
 23 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
 24 provision is not intended to modify whatever procedure may be established in an e-discovery  
 25 order or agreement that provides for production without prior privilege review. The parties  
 26 agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

SIGNED this 11th day of May, 2023.

PFAU COCHRAN VERTETIS AMALA, PLLC

By: /s/ Darrell L. Cochran  
Darrell L. Cochran, WSBA No. 22851

By: /s/ Kevin M. Hastings  
Kevin M. Hastings, WSBA No. 42316

By: /s/ Andrew S. Ulmer  
Andrew S. Ulmer, WSBA No. 51227

By: /s/ Alexander G. Dietz  
Alexander G. Dietz, WSBA No. 54842

*Attorneys for Plaintiffs*

TYSON & MENDES, LLP



By: /s/ Margaret M. Holm

Margaret M. Holm, CSBA No. 071252

By: /s/ Jennifer M. Veal

Jennifer M. Veal, WSBA No. 41942

By: /s/ M. Christopher Hall

M. Christopher Hall, CSBA No. 182439

*Attorneys for Defendant Secret Harbor*

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: September 6, 2023.



Jamal N. Whitehead  
United States District Judge